Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60

PETITION FOR RECONSIDERATION

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July 31, 2017

SUMMARY

DRS Global Enterprise Solutions, Inc. ("DRS") submits this Petition for Reconsideration of the Federal Communications Commission's June 30, 2017, Order ("*Order*") in the Rural Health Care Support Mechanism proceeding regarding the waiver of its rules to allow service providers in remote Alaska to reduce the cost of service to Alaskan health care providers ("HCPs") affected by reduced Rural Health Care Program ("RHC Program") funding. As an Alaskan communications provider, DRS respectfully requests that the FCC rescind the *Order* and fully fund the RHC Program for FY16.

Historically, the Commission has followed a "first-come, first-served" policy when processing funding requests for HCPs under the RHC Program. The total amount of funding for the RHC Program is capped at $400 million per funding year. Funding years run from July 1st through June 30th; for example, the funding year for 2016 began on July 1, 2016 and ended on June 30, 2017. Funding requests for a particular funding year can be submitted as early as January 1st of the funding year and must be submitted by the June 30th deadline; for our example requests could have been submitted starting January 1, 2016 and must have been submitted by June 30, 2017 for the 2016 funding year.

The Universal Service Administrative Company ("USAC") oversees a filing window during the funding year, from March 1st through June 30th of the filing year. Keeping with our example, the filing window for the 2016 funding year was held from March 1, 2016 through June 30, 2016. Requests submitted during the filing window are treated as submitted on the same day for processing purposes. After the close of the filing window, if the requested funding exceeds the total remaining support available for the funding year, USAC may prorate funding for filing window applicants. Otherwise, after the close of the filing window, USAC returns to a

disbursement model based on the "first-come, first-served" concept until the June 30th deadline the following calendar year.

For the first time since the first funding year of 1998, the demand for funding was predicted to exceed the cap in 2016. Given the long standing procedures that were in place, HCPs could expect USAC to therefore prorate the funding requests submitted in the one filing window proscribed for the 2016 funding year. However, the Commission surprisingly announced that a second filing window would be added and the requests submitted in that window would be prorated.

DRS argues herein that the Commission should reconsider the *Order* and fully fund the RHC Program for FY16 because: (a) adequate notice was not provided to the affected parties; (b) the Commission's rules do not permit the actions taken; (c) a more equitable approach available but was not considered by the Commission; and (d) the *Order* results in inequitable policy that harms the public interest.

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Pursuant to 47 C.F.R. § 1.106, DRS Global Enterprise Solutions, Inc. ("DRS")[1], through undersigned counsel, files this Petition for Reconsideration ("Petition") of the Federal Communications Commission's ("FCC" or "Commission") June 30, 2017 Order ("*Order*")[2] in the above-captioned matter. DRS respectfully requests that the FCC reconsider and rescind the *Order*.

Background

In the *Order*, the Commission adopted a waiver of its rules to allow service providers in remote Alaska to reduce the cost of service to Alaskan health care providers ("HCPs") affected by reduced Rural Health Care Program ("RHC Program") funding.[3] This waiver directly and negatively impacts DRS, because DRS partners with Alaskan tribal HCPs to provide

[1] DRS was formerly known as DRS Technical Services, Inc. DRS' FCC Registration Number is 0010567428.

[2] *In re Rural Health Care Support Mechanism*, Order, FCC 17-84, WC Docket No. 02-60, slip op. (June 30, 2017) ("*Order*").

[3] *Id.*

telecommunications health services and has been financially impacted by reduced funding for such services.

The RHC Program has a cap of $400 million per funding year.[4] Since the first funding year of 1998, demand for RHC Program funding had never reached the cap; however, after the first funding application window for funding year 2016 ("FY16"), the Wireline Competition Bureau ("WCB") anticipated that demand for support would exceed the cap for the first time.[5] In response, the WCB devised a system that would prorate funding based on demand rather than cut off funding when the cap was reached.[6]

Historically, "the deadline to submit a funding commitment request" is "June 30 for the funding year that begins on the previous July 1."[7] Funds are available to HCPs on a "first-come-first-served basis, with requests accepted beginning on the first of January prior to each funding year."[8] Also, the Universal Service Administrative Company ("USAC") is responsible for implementing a filing window once a year that treats all eligible HCPs as though their applications were simultaneously received.[9] The filing window lasts from March 1 until June 30 prior to the beginning of the funding year on July 1.[10] After the close of the filing window, "if the total demand … exceeds the total remaining support available for the funding year," USAC is

[4] *Id.*; 47 C.F.R. § 54.675 (a).

[5] *See Wireline Competition Bureau Provides a Filing Window Period Schedule For Funding Requests Under the Telecommunications Program and the Healthcare Connect Fund*, Public Notice, 31 FCC Rcd 9588, WC Docket No. 02-60 (WCB 2016) ("*Public Notice*").

[6] *Id.*

[7] 47 C.F.R. § 54.675(c)(4).

[8] 47 C.F.R. § 54.675(c)(1).

[9] 47 C.F.R. § 54.675(c)(2).

[10] *See Public Notice*, 31 FCC Rcd at 9589.

authorized to prorate funding for filing window applicants.[11] Otherwise, after the close of the filing window, USAC returns to a disbursement model based on the "first-come, first-served" concept until the June 30th deadline the following calendar year.[12]

In accordance with these guidelines, the RHC Program timeline for FY16 began as it had in previous years. From March 1, 2016 until June 30, 2016, USAC opened the annual filing window. FY16 began on July 1, 2016, and for just short of two months, USAC implemented the first-come, first-served model for reviewing applications. But the first-come, first-served system did not last until June 30th of the following calendar year, as has taken place in other funding years. Instead, on August 26, 2016, while FY16 was in progress, the WCB abruptly issued its *Public Notice* making changes to the filing process for FY16.[13] In the *Public Notice*, the WCB, *inter alia*, added a second filing window from September 1, 2016 to November 30, 2016; warned it would direct USAC to prorate funding if necessary for the second filing window; and closed application filing from December 1, 2016 to January 31, 2017.[14] The *Public Notice* was issued on a Friday, and the second filing window became active the following Thursday. Later, on April 10, 2017, USAC announced that funding requests received during the second filing window would be subject to a 92.5 percent pro rata factor due to excess qualifying requests of $20.47 million, after administrative expenses.[15]

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[11] *See* 47 C.F.R. § 54.675(f).

[12] *See Public Notice*, 31 FCC Rcd at 9589.

[13] *Id.* at 9588 *et seq.*

[14] *Id.* at 9590-92.

[15] *See FY2016 September – November Filing Window Period Funding Information and Pro-Rata Factor Announced*, USAC (April 10, 2017). The factor was calculated by dividing the funding available during the second filing window, $254,255,017, by the total amount of qualifying funding requests made during the second filing window, $274,725,249. *See Funding Information*, USAC, http://www.usac.org/rhc/funding-information/default.aspx (accessed July 28, 2017). The shortfall was $20,470,232. *See id.*

In its *Order*, the Commission recognized the hardship posed by the prorated funding to Alaskan HCPs in particular, because the "average effective increase in price paid by an HCP in the continental U.S. by virtue of the proration was approximately 11 percent, whereas in remote Alaska it was approximately 648 percent."[16] However, the Commission did not provide additional funding for Alaskan HCPs.[17] Instead, the Commission elected to allow service provider partners of Alaskan HCPs, such as DRS, to reduce their service charges and pass on the benefit of the price reductions to the HCPs.[18] Under this waiver option, service providers are not compensated by the Commission for any voluntary price reductions.[19]

DRS brings this Petition for Reconsideration because the approach that the Commission adopted in the *Order* is improper, unnecessarily harsh, and harms the public interest. The *Order* fails to consider or analyze whether RHC Program participants received adequate notice of the second filing window and pro rata funding. The *Order* also does not consider the more appropriate solution of authorizing the use of undisbursed funding from prior years so as not to harm competition and investment in rural healthcare, especially in underserved areas in Alaska. Finally, the *Order* creates bad public policy, in that it could lead to disparities among providers which would ultimately drive up prices for essential rural telecommunications.

Standard of Review

Under Section 1.106, reconsideration is appropriate "where the petitioner either shows a material error or omission in the original order or raises additional facts not known or existing

[16] *Order*, slip op. at 2.
[17] *See Order*, slip op. at 2-3.
[18] *Id.*
[19] *Id.*

until after the petitioner's last opportunity to present such matters."[20] In addition, a petitioner can rely on facts or arguments not previously presented if the FCC finds that the public interest requires consideration of such facts or arguments.[21] As shown herein, this Petition meets that standard.

Standing

DRS provides vital communications services to various Alaskan HCPs. The delivery of health care to these HCPs depends on, among other things, electronic health record access and the ability to dispense medication long-distance. The services DRS provides enables remote physicians to have daily communication with the health aides in the HCPs via phone and through the transmission of electronic health records.

The high-speed communications provided by DRS also enable "pickpoint machines" to function. Village clinics have pharmacy pickpoint machines, where the pharmacist in the main urban health center in Fairbanks reviews prescriptions requested by the health aides in the villages under authorization of a referral physician. Upon satisfactory review of the documentation and the prescription request in the electronic health record, the pharmacist electronically dispenses the medication in the village-based clinics *via* the pickpoint machine.

DRS' services also include video teleconferencing for medical evaluation of patients. This is a critical service, especially when a health care provider cannot be on site for a medical

[20] *In the Matter of Gen. Motors Corp. & Hughes Electronics Corp., Transferors And the News Corp. Ltd., Transferee, For Authority to Transfer Control,* Order on Reconsideration, 23 FCC Rcd. 3131 at ¶ 4 (2008). *See also* 47 C.F.R. § § 1.106(c); *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, Order on Reconsideration, 18 FCC Rcd. 24871 at ¶ 5 (2003).

[21] 47 C.F.R. § § 1.106(c); *In the Matter of the Hinton Telephone Company of Hinton Oklahoma, Inc., d/b/a Hinton Telephone Co.*, File No. EB-SED-14-00016210, Memorandum Opinion and Order, DA 15-1221 at ¶ 2 (FCC Enf. Bur. rel. Oct. 27, 2015).

evaluation.

Without DRS providing communications services to the HCPs, there are no other reliable options for getting them connected to medical staff and records. The only (unreliable) other option would be an oversubscribed satellite service provider. Other community offices and HCPs that have a satellite connection not provided by DRS are consistently experiencing a lack in reliability and lack of bandwidth. This is in stark contrast with the experience that is offered to the clinics by the rapid and dependable services provided by DRS.

As a telecommunications carrier that provides vital services to Alaskan HCPs, DRS stands to lose in excess of $380,000 due to the waiver solution directed by the *Order*. As such, DRS has standing to file this Petition for Reconsideration.

Argument

The *Order* grants a one-time waiver of Commission rules to solve a problem: Alaskan HCPs were disproportionately impacted when the WCB changed the RHC Program filing procedures to add a second filing window, which led to the implementation of pro rata funding.[22] But the Commission's *Order* omits any analysis of the validity of the WCB's action opening the second filing window; or any consideration of the adverse impact on the finances of impacted carriers, on competition, and on public policy. These material omissions of key policy and legal considerations require the Commission to rescind and reconsider its original *Order*. Instead, the Commission should pursue more equitable alternatives, such as using undisbursed funding from prior years to help make up the funding gap for Alaskan HCPs, an idea championed not only by interested HCPs and their service providers, but also by members of Congress and by the

[22] FCC rules restrict pro rata funding to be used only in conjunction with a filing window period. 47 C.F.R. § 54.675 (f).

Schools, Health & Libraries Broadband ("SHLB") Coalition *et al*.[23] DRS urges the Commission to take swift action to restore funding to traditionally underserved areas of rural Alaska and chronically underfunded Alaskan HCPs in a manner that comports with FCC rules and orders and best implements RHC Program goals.

I. THE COMMISSION ERRED BY NOT ANALYZING THE VALIDITY OF PRO RATA FUNDING IMPLEMENTED WITHOUT ADEQUATE NOTICE

The Commission's analysis in its *Order,* purportedly remedying the impact of pro rata funding for applicants to the RHC Program for Alaskan HCPs, materially omits any discussion of the validity of pro rata funding for FY16. This is a material error. The WCB's decision to direct USAC on August 26, 2016 to, *inter alia,* change the application filing timeline, open a second filing window, and raise the possibility of pro rata funding was not permissible because the FCC neither provided adequate notice of the changes nor complied with its own rules regarding filing windows and advance prior notice. The FCC's remedy for Alaskan HCPs must comport with FCC precedent and rules; otherwise, the *Order* is incomplete and should be reconsidered.

A. The Commission Was Not Permitted to Change the Application Filing Timeline and Process Without Providing Adequate Notice.

"Due process requires that parties receive fair notice before being deprived of property."[24] Federal courts have held that fair notice is determined by asking "whether 'by

[23] Letter, SHLB Coalition to Chairman Tom Wheeler and FCC Commissioners, WC Docket No. 02-60 (Nov. 30, 2016) ("SHLB Letter"), https://ecfsapi.fcc.gov/file/11302679329872/201611%20Letter%20from%20SHLB%20Petitioners%20re%20Interim%20RHC%20Cap%20Relief%20(FINAL).pdf; Letter, Senators Angus S. King, Jr., Susan M. Collins, Jeanne Shaheen, Margaret Wood Hassan, Tom Udall & Martin Heinrich to Chairman Ajit Pai and FCC Commissioners (Feb. 27, 2017) ("Senate Letter"), https://apps.fcc.gov/edocs_public/attachmatch/DOC-343947A2.pdf.

[24] *Gen. Elec. Co. v. U.S. E.P.A.*, 53 F.3d 1324, 1328 (D.C. Cir. 1995).

reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform....'"[25]

A corollary of the fair notice rule is that the Commission must adhere to previously noticed application filing procedures, including deadlines. In *McElroy Elecs. Corp. v. F.C.C.*, for example, the U.S. Court of Appeals admonished the Commission that it should adhere to deadlines and application timeframes it previously set.[26] Specifically, the Court considered a Commission order that set a date for lifting a five-year moratorium on filing applications for wireless licenses. When the date was reached and applicants applied for licenses, the Commission rejected the filings as premature, because the Commission had not issued a procedure for processing the applications. But the Court disagreed, and determined that petitioners were able to file their applications, writing, "[s]ince the order did not prescribe specific procedures, such as filing windows, for these applications, petitioners appropriately filed…" their applications.[27] Accordingly, the Commission is expected to adhere to previously set application timelines – unless the Commission alters the process via its rulemaking authority.[28]

In this case, beneficiaries of the RHC Program were not provided with adequate prior notice of the changes to the RHC Program implemented by the *Public Notice*. The WCB

[25] *Trinity Broad. of Florida, Inc. v. F.C.C.*, 211 F.3d 618, 628 (D.C. Cir. 2000) (citations omitted); s*ee McElroy Elecs. Corp. v. F.C.C.*, 990 F.2d 1351, 1353 (D.C. Cir. 1993) ("An agency cannot ignore its primary obligation to state its directives in plain and comprehensible English. When it does not live up to this obligation, we will not bind a party by what the agency intended, but failed to communicate.").

[26] *See McElroy*, 990 F.2d at 1363.

[27] *Id.*

[28] *See id.* at 1358-59 ("The issue before us is not what the Commission reasonably can do, but what its *Second Report and Order* can reasonably be construed to have done.").

imposed a new filing window to begin September 1, 2016, three business days after the August 26, 2016 release of the *Public Notice*.[29] This filing window significantly altered the "first-come, first-served" process for distributing funds that has been used for the RHC Program since its inception. Indeed, prior to August 26, 2016, there was no indication that the Commission would deviate from its long-standing procedures by creating a second filing window.[30] Similarly, in the *Public Notice*, the WCB warned that applicants could be subject to pro rata funding. However, prior to August 26, 2016, there was no notice to participants suggesting that a second pro rata funding distribution was an option – because FCC rules only allow for pro rata funding during the one established filing window.[31]

By implementing the filing window and warning of the possibility of pro rata funding just days before the filing window began, the WCB created a situation in which applicants did not have an adequate opportunity to adapt to the new rules. Applicants that might have filed in the first application window, from March 1, 2016 to June 1, 2016, or during the "first-come, first-served" period, from June 1, 2016 to August 31, 2016, were not provided with information about the consequences of failing to do so. An applicant with sufficient resources to quickly respond to the *Public Notice* by filing on August 29th, 30th, or 31st would have received full funding, not pro rata funding. Those without this ability suffered pro rata treatment, which they could have avoided if they had been provided adequate notice. The provision of inadequate notice in this instance has the unfortunate result of pitting the "haves against the have nots" and jeopardizes access to resources.

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[29] *See Public Notice*, 31 FCC Rcd at 9590-92.

[30] *See* USAC News Archive (2015-2016), http://www.usac.org/rhc/tools/news/news-archive.aspx?pgm=telecom; FCC Public Notices, WC Docket No. 02-60 (2015-2016).

[31] *See* 47 C.F.R. § 54.675 (f).

The similarity to the *McElroy* case is clear. As in *McElroy*, the Commission provided prior information that regulated parties relied on to their detriment. In *McElroy*, the information concerned a five-year moratorium on applications; in the present case, Commission regulations and long-standing procedure dictated that after the filing window, applications are received on a first-come, first-served basis through June 30th of the following year.[32] In both cases, regulated parties relied on prior Commission statements and procedures when submitting their applications. The Commission should honor the procedure it previously established, as the Court required in *McElroy*.

B. The Wireline Competition Bureau Was Not Permitted By FCC Rules to Open a Second Filing Window.

Even if the Commission is inclined to decide that proper notice was provided to RHC Program beneficiaries, the Commission cannot escape the simple fact that the Commission's prior orders and rules do not permit establishment of a second filing window. The Commission is bound to follow its own regulations,[33] which in this case state plainly, "[f]or the Telecommunications Program and the Healthcare Connect Fund, the Administrator shall implement a filing window period that treats all eligible health care providers filing within the window period as if their applications were simultaneously received."[34] Similarly, the Commission's order adopting Section 54.675 states:

> "We also direct USAC to establish a filing window for funding year 2013 and for future funding years as necessary, for both the Telecommunications Program and the Healthcare Connect Fund. When USAC establishes a filing window, it should provide notice of the

[32] *See* 47 C.F.R. § 54.675 (c).

[33] *Environmentel, LLC v. F.C.C.*, 661 F.3d 80, 85 (D.C. Cir. 2011) ("The Commission enjoys broad latitude to establish its own procedures, but it also must comply with its own regulations." (citations omitted)).

[34] 47 C.F.R. § 54.675(c)(2).

> window in advance via public notice each year. The filing window may begin prior to the first day of the funding year, as long as actual support is only provided for services provided during the funding year."[35]

The rule and the *Healthcare Connect Fund Order* refer to "a filing window" and "the filing window," not multiple filing windows. The rule requires that "the Administrator *shall* implement a filing window," requiring USAC to implement one filing window but not providing authority to open additional filing windows.[36] The *Healthcare Connect Fund Order* states that USAC is to establish a filing window "for funding year 2013 and for future funding years as necessary."[37] This indicates an expectation of one filing window per year.

Additionally, the filing window rule should be read in context of 47 C.F.R. § 54.675 (c)(1), which states, "[g]enerally, funds shall be available to eligible health care providers on a first-come-first-served basis, with requests accepted beginning on the first of January prior to each funding year." Thus, the FCC's rules create the clear expectation that there is one filing window and, otherwise, the application process is first-come, first-served.

Accordingly, the WCB acted outside the authority of the Commission when it ordered a second filing window. The second filing window is a creative and well intentioned solution,[38] but it cannot stand because it abrogates the filing process set up by the Commission and publicized to the industry through rules and orders. The WCB and USAC are not authorized to

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[35] *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16795-96 (2012) ("*Healthcare Connect Fund Order*").

[36] 47 C.F.R. § 54.675(c)(2) (emphasis added).

[37] *Healthcare Connect Fund Order*, 27 FCC Rcd at 16796.

[38] As set forth in more detail herein, while the WCB's intentions may have been good, the overall result creates inequities and will adversely impact vulnerable communities.

prorate funding outside of the one prescribed filing window.[39] Instead, they are required to follow the first-come, first-served process set up by the Commission's Rules.[40]

C. The Commission Should Enforce the "Advance" Notice Directive for Filing Windows.

The *Healthcare Connect Fund Order* also explicitly requires advance public notice prior to the establishment of the filing window, stating, "[w]hen USAC establishes a filing window, it should provide notice of the window in advance *via* public notice each year."[41] Even if the Commission finds that the second filing window was permissible despite no grant of authority in 47 C.F.R. § 54.675, the Commission must determine that USAC (as well as the FCC and WCB) failed to provide sufficient public notice of the second filing period to meet the requirements of the *Healthcare Connect Fund Order*.

The *Public Notice* was released on August 26, 2016 by the WCB and USAC just days before the second filing window was to go into effect. This simply does not meet the requirement of advance public notice, as RHC Program beneficiaries were not provided sufficient lead time to adapt to the new application framework, especially when the new process was an unexpected departure from the procedure of all prior years of the RHC Program. Essentially, then, by issuing the notice so close to the beginning of the second filing window, the WCB and USAC negated the meaning of "advance" such that no reasonable applicant could have been expected to have a chance to file under the prior first-come, first-served framework before the beginning of the second filing period.

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[39] *See* 47 C.F.R. § 54.675(f).

[40] *See* 47 C.F.R. § 54.675(c)(1).

[41] *See Healthcare Connect Fund Order*, 27 FCC Rcd at 16795-96.

Advance notice was required by the *Healthcare Connect Fund Order* for a reason – to provide RHC Program beneficiaries with critical information about the application filing process. If the Commission treats the *Public Notice* issued on August 26, 2016 as "advance notice," it would undermine not only its prior directive but more so the consultative framework that is the basis of advance notice of any administrative agency action.

D. If The Commission Finds Pro Rata Funding Was Not Permissible, the *Order* Must Be Reconsidered.

By not providing requisite notice as required by precedent and the *Healthcare Connect Fund Order*; and by initiating a second filing window without authority to do so, the WCB did not act under the color of law when it released the *Public Notice*. The *Order* does not address this defect, but instead seeks to cure the inequitable results that occurred when Alaskan HCPs were subject to pro rata funding decisions by permitting carriers to absorb the financial consequences. The FCC should reconsider this approach, and instead endorse a more equitable solution based on the authorized, well established rules.

II. THE COMMISSION ERRED BY FAILING TO CONSIDER WHETHER UNDISPERSED AND RESERVE FUNDING SHOULD BE ALLOCATED TO MEET THE RHC PROGRAM SHORTFALL.

The *Order* is also fatally flawed because the Commission failed to consider the more appropriate remedy of simply authorizing the use of existing RHC Program funding and reserve funding to close the $20.47 million shortfall.[42] This is a material omission. Given the existence of undisbursed funding from prior years, there is no need for the FCC to take the extraordinary step of waiving its own rules to the detriment of small and mid-sized carriers, like DRS, that are being asked to shoulder the costs created by the pro rata funding decision. This omission is

[42] *See supra* note 15.

made even more problematic by the fact that numerous parties have specifically requested that the Commission tap into available funding and reserves to remedy any potential funding gap.

47 C.F.R. § 1.3 states that the Commission's rules can be waived for "good cause shown." And, as the Commission noted in the *Order*, waiver of its rules can be appropriate if particular facts and circumstances render strict compliance with the rules against the public interest.[43] The Commission justified its decision to waive its rules by citing to the "unique circumstances" created by demand that exceeded supply of the $400 million earmarked for the RHC Program.[44] However, implementing the waiver is neither supported by good cause nor in the public interest. Indeed, the FCC had clear options to fully fund the RHC Program which it could and should have taken. Thus, there are no "unique circumstances" warranting the *Order*.

In November 2016, the Counsel for Schools, Heath & Libraries Broadband Coalition ("SHLB") sent a letter to the Commission requesting emergency and temporary relief to address the RHC Program funding gap.[45] In its letter, the SHLB asked the Commission "to direct USAC to reallocate unused RHC funds that were committed in previous funding years to current applicants if the funding cap is reached in this funding year."[46] The SHLB correctly recognized that because these funds had already been collected by USAC, taking this temporary step would not require an increase to the USF contribution factor. Further, such an approach is not at all novel and has been in place in the Schools and Libraries program since 2002.[47]

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[43] *Order*, slip op. at 2.
[44] *Order*, slip op. at 3.
[45] *See* SHLB Letter, *supra* note 23.
[46] *Id*. at 2.
[47] *Id*.

To illustrate the viability of its proposed solution, SHLB provided an estimation of the RHC Program funds that are potentially available for a rollover. SHLB determined that since the Program's inception through the end of calendar year 2013, there were $49 million in RHC Program funding that had been authorized but not dispersed.[48] Based on the data from that fifteen year period, SHLB extrapolated a seven percent rate representing undispersed funds, and applied the rate to years following 2013.[49] As a result, SHLB estimated that there is over $44 million in undisbursed funds that is available for rollover. And, this is in addition to $35 million held in reserve funding.[50]

The SHLB is not the only group to express concern over the Commission's reaction to the funding shortfall. On February 27, 2017, a bipartisan group of U.S. Senators called on the Commission to leverage existing RHC Program funding to remedy the shortfall.[51] In their letter, the senators reiterated the need for the Commission to avoid "flash cuts or sudden funding reductions" for healthcare providers.[52] The Senators' letter echoed the concerns raised by the SHLB and encouraged the Commission to act on the SHLB's proposed solution of allowing unexpended RHC Program funds from prior years to be made available to current applicants. The senators also cited to USAC's report that potentially $90 million from the pilot program may also be available to address the shortfall.[53]

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[48] *Id*. at 5.

[49] *Id*. at 5-6.

[50] *See Funding Information*, USAC, http://www.usac.org/rhc/funding-information/default.aspx (accessed July 28, 2017).

[51] *See* Senate Letter, *supra* note 23.

[52] *Id*. at 2.

[53] *Id*.

In sum, the Commission's failure to consider and address the availability of tens of millions of dollars to cover the $20.47 million funding shortfall is a material omission that requires reconsideration of the *Order*. The seriousness of this error is compounded by the fact that the Commission had been alerted to this solution prior to its issuance of the *Order*. Further, as discussed below, if left unchanged, the Commission's and USAC's current path forward creates bad policy and poses serious risk to the RHC Program and its participants.

III. THE COMMISSION'S *ORDER* SETS HARMFUL PUBLIC POLICY, AND THEREFORE MUST BE RESCINDED.

While the Commission's motives in waiving its rules may be well-intentioned, the result causes more harm than good. The Commission's approach skews the competitive marketplace and puts small and mid-size carriers at a competitive disadvantage. Put simply, the economics do not add up. The result of the Commission's plan will create unnecessary hardships to program participants and could jeopardize the availability of critical healthcare to underserved communities.

A core aspect of the RHC Program is to incorporate competition and competitive bidding in order to encourage service offerings that are both valuable and cost-effective.[54] But by requesting providers to offer voluntary price reductions, the Commission is skewing the fair and competitive landscape. For example, if Company A agrees to the reduction because less revenue is at stake, but Company B cannot afford to reduce its prices, Company B would be put in a position of possibly losing contracts to Company A in the next round of bidding simply because Company A had the financial ability to absorb the price reduction when Company B did not. The *Order* thereby alters the bidding landscape, favoring large companies that can take the

[54] *See Healthcare Connect Fund Order*, 27 FCC Rcd at 16681-82.

financial hit of forgiving or reducing revenue by hundreds of thousands (to millions) of dollars. This hampers the ability of small and mid-sized businesses from staying competitive. And, in the absence of robust competition, prices will increase.

Meanwhile, another side effect of this dynamic is that the waiver creates an adversarial relationship between HCPs and service providers. HCPs will choose to do business with service providers that reduce their prices in accordance with the Commission's waiver. HCPs are unlikely to continue to do business with service providers that are financially unable to reduce their prices.

It is important to remember that while the 92.5 percent pro rata factor was calculated by USAC based on supply and demand during the second filing window in FY16, the factor is meaningless in the context of whether or not a service provider can afford to reduce costs in accordance with the waiver. Service providers do not operate their businesses based on FCC program caps. For any given service offering, a 7.5 percent reduction in the invoiced cost could represent a four digit dollar figure as much as it could represent a seven digit dollar figure. The Commission's *Order* makes no distinctions based on the service contract, the HCP involved, the costs to the service provider, or any other metric. To service providers, the suggestion by the Commission that service providers reduce their prices by a one-size-fits-all factor is harsh and not well-developed policy.

Service providers will be required to recoup their losses created by this FCC *Order*. It is expected that service providers serving Alaskan HCPs will increase prices at the next contract period to recover losses incurred and to protect against the risk of a shortfall happening again. The inevitable price increase will, in turn, harm HCPs and their patients, and make it extremely difficult for the Commission and USAC to make funding decisions.

The SHLB also alerted the Commission to the adverse impacts faced by both HCPs and service providers should the Commission fail to rollover available funds. In particular, the SHLB recognized the uncertainty facing service providers in the absence of adequate guidance and notice from the Commission and discussed the negative impact on the program as a result of this uncertainly:

> "The Commission has not made clear whether service providers are expected to forgive the cost of expensive circuits that are not fully funded because of the cap (assuming they are willing and able to). The resulting uncertainty will only cause service providers to avoid the RHC program, thereby decreasing the number of potential bidders and raising program costs for individual connections, as service providers factor the increased risk of reduced payment or non-payment."[55]

There is little question that demand for essential rural health care broadband funding will continue to increase. The Commission should consider sustainable solutions to address the increase in the demand in the long term, including expanding the current $400 million cap. However, in the meantime, a short-term solution is required. This solution must be fair to all participants and should not put HCPs in an adversarial position against service providers or pick winners or losers in the competitive marketplace.

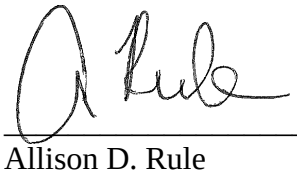
[55] SHLB Letter, *supra* note 23, at 5.

Conclusion

For the foregoing reasons, DRS requests that the FCC reconsider and rescind its June 30, 2017 *Order* and fully fund the RHC Program for FY 2016.

Respectfully submitted,

DRS Global Enterprise Solutions, Inc.

By: 

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DATED: July 31, 2017